

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**RESERVE MANAGEMENT COMPANY, INC.,
RESRV PARTNERS, INC., BRUCE BENT SR.
and BRUCE BENT II,**

Defendants,

and

THE RESERVE PRIMARY FUND,

Relief Defendant.
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No. 09 Civ. 4346 (PGG)

ECF CASE

**DECLARATION OF MICHAEL BIRNBAUM
IN SUPPORT OF THE COMMISSION'S
MOTION IN LIMINE TO INTRODUCE EVIDENCE OF DEFENDANTS'
COMMUNICATIONS WITH PRIMARY FUND INVESTORS**

I, Michael D. Birnbaum, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am employed as Senior Counsel in the New York Regional Office of Plaintiff, Securities and Exchange Commission. I submit this declaration in support of the Commission's Motion In Limine to Introduce Evidence of Defendants' Communications with Primary Fund Investors. I am fully familiar with the facts and circumstances described herein.

2. Attached hereto as Exhibit A are true and correct copies of Plaintiff's proposed Trial Exhibits ("PX") cited in the Commission's Memorandum of Law in Support of its Motion In Limine to Introduce Evidence of Defendants' Communications with Investors ("Moving Memorandum"): PX 3(a), 16(a) 32(a), 44, 48, 49, 55, 56, 103, 112, 124(a&b), 131, 145, 147(h),

147(l), 147(m), 147(s), 147(t), 167(a), 175(a&b), and 261. Audio files are included on the accompanying disc.

3. Attached hereto as Exhibit B is a true and correct copy of Defendants' proposed Trial Exhibit ("DX") 183. Because of its size, this Exhibit is submitted in full on the accompanying disc. This document (and others attached hereto that contain investor information) will be filed on ECF in redacted form pursuant to Fed. R. Civ. P. 5.2.

4. Attached hereto as Exhibit C is a true and correct copy of portions of the transcript of John Drahzal's November 1, 2010 deposition testimony cited in the Commission's Moving Memorandum.

5. Attached hereto as Exhibit D is a true and correct copy of portions of the transcript of Bruce Bent II's November 3, 2008 investigative testimony cited in the Commission's Moving Memorandum.

6. Attached hereto as Exhibit E is a true and correct copy of portions of the transcript of Bruce Bent II's November 25, 2008 investigative testimony cited in the Commission's Moving Memorandum.

7. Attached hereto as Exhibit F is a true and correct copy of portions of the transcript of Bruce Bent Sr.'s October 29, 2008 investigative testimony cited in the Commission's Moving Memorandum.

8. Attached hereto as Exhibit G is a true and correct copy of portions of the transcript of Patrick Farrell's February 19, 2009 investigative testimony cited in the Commission's Moving Memorandum.

9. The Reserve's sales team transmitted *Insights* to numerous investors who did not own any Primary Fund shares at the time Reserve personnel provided them with that press

release. For example, Mark Rothwell sent an email at 8:01 p.m. on September 15, 2008 transmitting *Insights* to, among others, ADP, AOL Time Warner, Inc., Time Warner Cable, Inc., E*Trade Financial Corporation and affiliates, Protective Life Insurance Company, and International Paper Company. (PX 55, attached hereto as part of Exhibit A.) According to DX 183 (attached hereto as Exhibit B), a document Defendants identify as the “Redemption Masterlist” (Ex. F to DE 455, Parties’ Proposed Joint Pretrial Order) all of these companies were fully divested of their Primary Fund shares when Mr. Rothwell sent them the *Insights* piece.

10. Attached hereto as Exhibit H are copies of materials supplied with the Expert Report of Charles Lundelius, which purport to reflect the trading history between July 1 and September 15 of certain investors who purchased into the Primary Fund on September 15 or 16, 2008. The records reflect numerous purchases and sales over the tracked period, sometimes both purchases and redemptions on the same day.

11. Attached hereto as Exhibit I are copies of account statements for the month of September 2008 for (and produced by) Primary Fund investors Paycor, Inc., four different Henry Ford Health System affiliates (Health Alliance Plan, Alliance Health and Life Insurance, Henry Ford), and FRTC Securities Lending Short-Term, an entity of Russell Investment Company (submitted as Exhibit B to the Declaration of William K. Dodds, executed July 22, 2009) (DE25), which reflect the purchase and sale activity in those accounts over that period. While the Commission’s document requests sought the production of all investor communications, Defendants failed to provide these account statements.

12. Based on my review of the record, including recorded calls and transaction logs, and information I learned from interviews in which I participated, I understand that certain of the investors with whom Ryan Green shared Defendants’ message of credit support on September

15, 2008, did not own any Reserve Primary Fund shares and were contacted by Ryan Green as part of an effort to solicit purchases into the Primary Fund and other Reserve Funds. Ryan Green's discussion with one such investor is recorded as PX 16a.

Executed on July 17, 2012
New York, New York


Michael D. Birnbaum